USAA FEDERAL SAVINGS BANK

USAA ®

January 3, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20^{th} Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1393 and RIN No. 7100-AD55

Dear Ms. Johnson:

USAA Federal Savings Bank ("USAA") is a subsidiary of United Services Automobile Association, a financial services company that serves members of the military and their families. We appreciate the opportunity to comment on proposed amendments issued by the Board of Governors of the Federal Reserve System ("Board") to the Regulation Z provisions that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "Credit CARD Act").

USAA supports most of the proposed amendments. In particular, we urge the Board to retain the provisions related to: (1) increasing temporary fee amounts and SCRA rates upon expiration; (2) eliminating the right to reject a temporary rate offered by telephone when the "go-to" rate will not increase; and (3) allowing card issuers to reverse a credit of a disputed transaction when the merchant also issues a credit or refund. We believe these proposed amendments strike the proper balance between consumer protection and card issuer efficiency and fairness.

However, USAA is highly concerned about the proposed amendments relating to the ability-to-pay provisions. This letter focuses exclusively on our concerns relating to the impact on married consumers in general and on married consumers in the military in particular. Military spouses, especially military wives, are much more likely to be underemployed (e.g. less-than adequately full-time employed), working part-time, or out of the labor force completely[1]. As a result, the proposed amendments would have a large, disproportionate impact on military wives who tend to earn much less than their "look-alike" civilian counterparts[2] and depend more on spousal income.

[1] Nelson Lim and David Schulker, *Measuring Underemployment Among Military Spouses*, xvi, RAND Corporation (2010), available at http://www.rand.org/pubs/monographs/MG918.
[2] *Id.*

1. Ability to Pay (Section 226.51)

Under section 226.51 of Regulation Z, "[a] card issuer must not open a credit card account for a consumer, or increase any credit limit applicable to such account, unless the card issuer considers the ability of a consumer to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations."

The proposed amendments would not permit a card issuer to consider household income or assets as part of its analysis of a consumer's ability to make minimum payments, unless the consumer has an ownership interest under federal or state law, as in the case of a community property state. USAA urges the Board to adopt revisions to regulation Z that would allow card issuers to consider household income.

A. Negative Impact on Married Consumers Generally

The proposed amendments would have a significant negative impact on married consumers because they would preclude consideration of a spouse's income while, at the same time, mandate the use of all the couple's joint obligations. This formula would likely result in a large discrepancy between the credit card approval rates and credit limits for unmarried and married consumers. Indeed, many married consumers would likely be precluded from obtaining an individual credit card.

The difference between the treatment of married and unmarried consumers under the proposed amendments is illustrated in the following examples:

EXAMPLE # 1: Unmarried Consumer with $60,000 Annual Income and $2,000 Monthly Current Obligations

Joe is an unmarried consumer who earns $5,000 monthly ($60,000 annually). His current obligations include a mortgage and a car loan with total monthly payments of $2,000. Joe has a 600 credit score. He applies for a credit card with a 3% minimum payment. Under the regulation, the maximum credit card payment Joe could make would be $3,000 per month because this is the amount by which Joe's income exceeds his current obligations ($5,000 income - $2,000 obligations = $3,000 remaining for payment on credit card). Based on the terms of a credit card with a 3% minimum payment, Joe could qualify for a credit card with a $100,000 credit limit ($3,000 monthly payment permitted by the regulation /3% minimum payment terms = $100,000 maximum credit limit).

EXAMPLE # 2: Married Consumers with $60,000 Annual Household Income and $2,000 Monthly Current Obligations (Husband and Wife each earn $30,000 annually)

Jack and Jill are married consumers who have a combined monthly household income of $5,000 ($60,000 annually). They each have monthly income of $2,500 ($30,000 annually). Their current obligations include a mortgage and a car loan with total monthly payments of $2,000. Both debts are joint obligations. Jack has a 700 credit score while Jill has an 800 credit score. Jack and Jill each apply for a credit card with a 3% minimum payment. Under the proposed amendments, the maximum credit card payment either Jack or Jill could make on an individual card would be $500 per month because this is the amount by which each spouse's individual income exceeds their jointly owed current obligations ($2,500 income - $2,000 obligations = $500 remaining for payment on credit card). Based on the terms of a credit card with a 3% minimum payment, Jack and Jill could each qualify for a credit card with a $16,667 credit limit ($500 monthly payment permitted by the proposed amendments /3% minimum payment terms = $16,667 maximum credit limit).

These two examples demonstrate how the proposed amendments would treat married and unmarried consumers with the same household income and obligations differently. The combined individual credit limits of both married consumers in Example #2 ($33,334) would be about one third of the individual credit limit of the unmarried consumer in Example #1 ($100,000). The proposed amendments therefore would treat the unmarried consumer (who in the example has the lowest credit score) as having a significantly greater ability to pay than both married consumers together.

EXAMPLE # 3: Married Consumers with $60,000 Annual Household Income and $2,000 Monthly Current Obligations (One spouse earns $36,000 and the other earns $24,000 annually)

Same facts as Example #2, except that Jack has an individual monthly income of $3,000 and Jill has $2,000. Under the proposed amendments, Jill would be declined for a credit card because her individual income and current joint obligations are both the same ($2,000 per month). Therefore, she would be deemed to not have the ability to make any credit card payment. On the other hand, if Jack applied for a credit card with a 3% minimum payment, he could qualify for a credit card with a $33,333 credit limit.

Example #3 demonstrates the unfairness the proposed amendments would have on married consumers when both spouses make a significant percentage of household income, but one makes less than the other. In this situation, the spouse with less income would frequently be unable to obtain a credit card while the other spouse (even with a lower credit score) could. As in Example #2, the combined credit limits of both spouses in Example #3 would be significantly lower than for an unmarried consumer with the same household income and current obligations.

EXAMPLE # 4: Married Consumers with $60,000 Annual Household Income and $2,000 Monthly Current Obligations (One spouse earns all income)

Same facts as Example #2, except that Jack makes all the income for the household. Under the proposed amendments, Jack could qualify for a $100,000 credit limit, but Jill would be declined because a card issuer could not rely on any of the household income since, for the purposes of the rule, none of it would be hers.

Example #4 demonstrates the unfairness the proposed amendments would have on married consumers who do not work outside of the home. Even though Jill has the highest credit score, she would be declined while Jack and Joe could both receive $100,000 credit limits. Under the proposed amendments, few married consumers who do not work outside of the home could obtain a credit card in their own right.

All four examples show the large discrepancy that the proposed amendments would cause in approval rates and credit limits between married and unmarried consumers. By considering joint obligations but not household income, we believe the ability of a married consumer to make minimum payments on a credit card would be greatly understated.

B. Negative Impact on Married Consumers when both Spouses have Significant Portion of Household Incomes

The amounts and payments of a married consumer's mortgage and car loan obligations are usually based on household income. When both spouses bring home a significant percentage of household income, the couple can purchase a more expensive house or car than either spouse's individual income would allow. However, the monthly payments on these obligations may very well exceed the income of the lower-earning spouse. Indeed, in the above examples, when Jill earned 40% or less of the household income, her joint debts would have precluded her from qualifying for a credit card under the proposed amendments. Even when both spouses have incomes in excess of the required payments on their joint obligations, the ratio of each individual spouse's income to the joint debt may be quite high. In Example #2 above, when both spouses earn the same amount ($2,500 per month), they would each would have a debt-to-income ratio of 80%. As a result, they collectively could qualify, under the proposed amendments, for up to one-third of the credit line of the unmarried consumer who had the same household income and debts. However, as a practical matter, each spouse would most likely be declined due to insufficient income because a card issuer would not permit such a high debt-to-income ratio.

C. Negative Impact on Married Consumers without Individual Income

Married consumers with little or no income, as shown in Example #4, would be precluded from obtaining a credit card under the proposed amendments. In this regard, the negative effects of the proposed amendments would fall mostly on the 27% of married women who do not work outside of the home.[3] It was the inability of married women to obtain credit that led to the passage of the Equal Credit Opportunity Act of 1974 (the "ECOA"). The purpose of the ECOA was to make credit "equally available to all creditworthy customers without regard to sex or marital status."[4] In conducting hearings in 1973 (the year before passage of the ECOA), a Senate report identified the effects of this problem on women: "Women who are divorced or widowed have trouble reestablishing credit. Women who are separated have a particularly difficult time since their accounts may still be in the husband's name."[5] History has shown that the failure of a person to establish credit during a marriage could have devastating effects if the marriage ends in separation, divorce or death.

The discrepancy between unmarried and married consumers with the same household income and debts would evaporate whenever married consumers apply for a joint credit card. However, there are many reasons why married consumers would prefer to have individual rather than joint credit cards. For example, one spouse may have a better credit record than the other spouse and therefore would qualify for a much lower interest rate than with the spouse as a joint applicant. In addition, it is our understanding that some card issuers no longer market joint credit cards, thereby limiting the availability of joint credit card options. Furthermore, there may be instances where the higher income earning spouse refuses to become jointly liable, making it impossible for some married consumers to qualify for a card at all.

D. Negative Impact on Military Wives Significantly Greater than on Civilians.

A full 50% of military wives do not work outside of the home – 43% because they are not in the labor force and 7% because they are unemployed.[6] The other 50% are three times more likely as civilian wives to be underemployed[7]:

> Comparisons of military wives with their look-alikes – a group of weighted civilian wives, show that military wives have a much greater tendency to be underemployed. Military wives are much more likely than their look-alikes to be [not-in-the-labor force]. Military wives are more likely to involuntarily work part-time and to have relatively high education for their jobs than their civilian counterparts. Finally, military wives are

[3] *Id.* at 36 (Figure 5.1).
[4] See Equal Credit Opportunity Act of 1974, tit. V, §502.
[5] S. Rep. No. 93-278 (June 28, 1973).
[6] Lim and Schulker, *supra.* at 36 (Figure 5.1)
[7] *Id.*

substantially less likely to be adequately full-time employed compared with similar civilian wives.[8]

As a result, military wives must rely on their husband's income to a greater extent than civilian wives. In addition, the divorce rate among military couples is believed to be higher than for the civilian population and has been rising over recent years.[9] Thus, while the proposed amendments would have a significant negative impact on married consumers in general, its effect on military wives would be disproportionately higher.

2. Conclusion

USAA urges the Board to revise the regulation to specifically permit card issuers to use household income when considering the ability of consumers to pay credit card debt.

USAA appreciates the opportunity to provide comments on the proposed amendments. If you have any questions regarding our comments, please do not hesitate to call me at (210) 498-1095.

Sincerely,

Ronald K. Renaud
AVP Executive Attorney
Banking Counsel

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[8] Id. at xvi.

[9] David Tarrant, *Stress of Separation takes its Toll on Military Families*, The Dallas Morning News, December 19, 2010, available at http://www.dallasnews.com/sharedcontent/dws/news/texassouthwest/stories/DN-private_battles_19ent.ART0.State.Edition1.4377af5.html